IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Crl.Rev.Pet.No. 2376 of 2007()

AGAINST THE ORDER DATED 18/05/2007 IN CMP 1677/07 IN CP.32/2006 of JUDL.MAGISTRATE OF FIRST CLASS, KARUNAGAPPALLY

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REVN. PETITIONER: PETITIONER/ACCUSED

P.G.SEKHARA PILLAI, S/O. GOPALA PILLAI,
THOTTUVAPARAMBIL HOUSE, MANJAPPALLY BHAGOM,
THAMPALAKKADU KARA, KANJIRAPPALLY.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.ROSHEN.D.ALEXANDER

RESPONDENTS: COUNTER PETITIONER

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
(THROUGH C.I. OF POLICE, KANJIRAPPALLY).

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2376 OF 2007

Dated this the 19th day of June, 2007

O R D E R

Petitioner, who is the accused in Crime No.8/2005 of Kanjirappally Police Station for offences punishable under sections 323, 506(i), 376 and 450 IPC, filed C.M.P. No.1677/2007 before the committal court, namely, JFCM-I, Kanjirappally, where the case is pending as C.P.No.32/2006 for a direction to subject to the petitioner to medical examination for the purpose of finding out whether the petitioner is capable of emission of spermatozoa. According to the petitioner, he had undergone vasectomy operation long before the date of the alleged rape and, therefore, incapable of emitting spermatozoa. This was evidently to disprove the certificate of chemical analysis in which it has been noted that the vaginal smear of the victim contained human spermatozoa. The petitioner would have it that he had requested the Investigating Officer during the stage of investigation to consider this aspect of the matter which will falsify the contention of the prosecutrix but the Investigating Officer had ignored the request of the petitioner. He, therefore, filed C.M.P. No.1677/2007before the committal court, as aforesaid.

2. The committal Magistrate dismissed the said application submitting, inter alia, that it is not part of the function of the committal

court to collect evidence and that the only role of the committal court is to commit the case to the sessions court after complying with the statutory formalities.

3. I do not think that the order of the committal Magistrate suffers from any irregularity, illegality or impropriety so as to warrant any interference by this court. It is now well settled that the sessions court while conducting the preliminary hearing under section 227 Cr.P.C. can only look into the materials produced by the prosecution and that it cannot look into any material produced by the defence nor can it entertain any application filed by the defence to cause production of any evidence at that stage. If so, even if the committal court was to oblige the petitioner, the resultant material cannot be looked into by the sessions court at the stage of the preliminary hearing. The petitioner will, however, be fully entitled to take up his defence based on the aforesaid contentions at the appropriate stage of the trial. In this view of the matter, I do not find any good reason to interfere with the impugned order.

This revision petition is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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